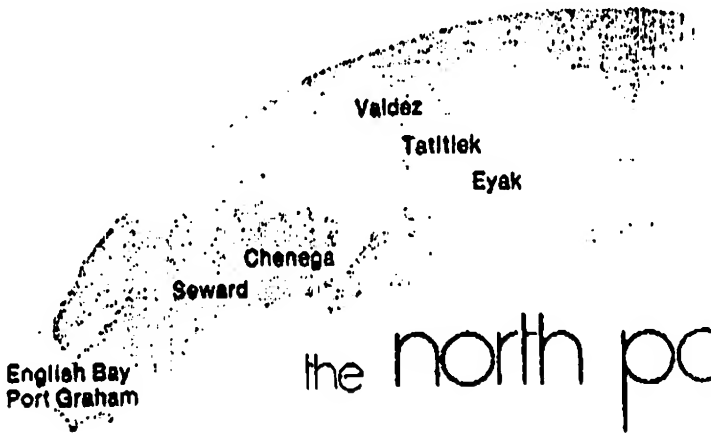
RECEIVED
OCT 8 1990
TRIBAL GOVERNMENT SERVICES



the north pacific rim

FAX TRANSMITTAL COVER SHEET

DATE: 10-8-90

TIME: _____

SENT TO: Regina Parot

ATTENTION: Regina Parot

THIS FAX IS BEING SENT BY: Brook Krstovich

NUMBER OF PAGES (INCLUDING THIS SHEET) 13

IF YOU DO NOT RECEIVE ALL PAGES, PLEASE CALL BACK AS SOON AS POSSIBLE. (907) 562-4155.

ORIGINALS WILL BE SENT VIA:

____ U.S. MAIL - EXPRESS MAIL

____ U.S. MAIL - FIRST CLASS

____ HAND DELIVERY - _____

____ OTHER - _____

NOTE: _____

FAX OPERATOR: Lena

Alaska 99603-2775 / Ph (907) 562-4155 / Fax (907) 563-2891

CONSTITUTION
OF THE
NATIVE VILLAGE OF PORT GRAHAM

PREAMBLE

We, a group of Aleut Natives, having in common our cultural heritage, including our language, traditions, and history, and having a common residence in the neighborhood of Port Graham, Alaska, do ordain and establish this Constitution, to promote our social, economic, and political progress, in accordance with and pursuant to the authority set forth in the Indian Reorganization Act of June 18, 1934 (48 Stat. 984) as amended.

ARTICLE I - NAME

The name of this Village shall be the Native Village of Port Graham.

ARTICLE II - TERRITORIAL JURISDICTION

The jurisdiction of the Native Village of Port Graham shall extend to those lands encompassed by the Native Village Townsite of Port Graham, the Native Allotments contiguous to the Townsite boundaries, the lands selected by Port Graham pursuant to the Alaska Native Claims Settlement Act which are contiguous with the townsite or allotments, any land acquired by the tribe, and all Indian Country, as defined by Federal law, as may be found to exist in the vicinity of the Village, to the fullest extent permitted by Federal law, as defined by ordinance duly adopted pursuant to this Constitution.

ARTICLE III - MEMBERSHIP

Section 1. Base Roll. The base roll of the Native Village of Port Graham shall be that Village Roll certified pursuant to the Alaska Native Claims Settlement Act, subject to corrections made by the governing body of the Village prior to the adoption of this Constitution.

Section 2. Members.

(a) All lineal descendents or adopted Native children of a base enrollee shall be enrolled upon approval of their application by the Council, providing that the applicant has provided documentation showing that he or she is a lineal descendent or an adopted Native child of a base enrollee.

(b) Alaska Native spouses of enrolled members, who are not eligible for membership under Section 2(a) of this Article, may make application to the Council for membership in the Native Village of Port Graham, and will have the same rights and privileges as members who are lineal descendents, except for the right to be a member on the Council. Approval shall be at the discretion of the Council.

Section 3. No Dual Membership. No applicant can be enrolled to the Native Village of Port Graham who is also enrolled as a member of any other Alaska Native or American Indian tribe. Written proof of forfeiture of membership in such other tribe shall be required.

Section 4. Denial and Loss of Membership.

(a) Any member who is continually absent from the Village for a period of five (5) years is subject to loss of membership. Persons who have lost their membership as a result of absence from the Village may be enrolled again, upon application and approval of the Village Council. For the purposes of this Section, any member pursuing his or her education, or who is in medical care, or who is on active duty in the Armed Forces of United States, shall not be construed to be absent from the Native Village of Port Graham.

(b) An applicant who has been found guilty of a felony in any Federal or State Court may be denied membership, if the Council finds that the nature of the felony would pose an unreasonable risk to the health, safety, or morals of the community. Provided, however, that denial of membership under this subsection shall not be permitted after five years following the completion of the applicant's State or Federal sentence for such felony.

(c) Any member of the tribe who is found guilty of a felony as described in subsection b., above, shall immediately lose his or her membership and shall not be eligible for reinstatement until completion of his or her State or Federal sentence and probationary period for such felony.

Section 5. Enrollment Ordinance. An Enrollment Ordinance shall be enacted within thirty (30) days after the adoption of this Constitution. The Enrollment Ordinance will include, but not be limited to, establishing enrollment procedures, eligibility requirements for membership, disenrollment guidelines, and procedures for appeals of enrollment decisions.

ARTICLE IV - GOVERNING BODY

Section 1. Name. The governing body of the Native Village of Port Graham shall be the Tribal Council, and may be referred to as the Council.

Section 2. Composition. The Council shall consist of five (5) members, including four officers. The officers shall include a Chief, Second Chief, Secretary, and Treasurer. The Council shall be elected by a majority vote of the qualified members of the Village physically present and voting at the annual election.

Section 3. First Election. The first election of the Council under this Constitution shall be held within sixty (60) days of the effective date of this Constitution, at which time a system of staggered terms shall be established: the Chief, Treasurer, and Member shall be elected for a term of two (2) years. The Second Chief and Secretary shall be elected for a term of (1) one year. Thereafter, all terms of office shall be two-year terms.

Section 4. Assumption of Office. Newly elected Council members shall take office immediately following the election, provided that the election results have been certified by the Election Board. In any event, incumbents shall continue in office until their successors are duly elected and seated.

ARTICLE V - ELECTIONS

Section 1. Voter Qualifications. Any duly enrolled member of the Native Village of Port Graham, who is eighteen (18) years of age or older and who has resided in the Village for at least one (1) year immediately preceding an election shall be entitled to vote in that election.

Section 2. Qualifications of Candidates. Council members must be base enrollees or lineal descendants of base enrollees. Any base enrollee or lineal descendent of a base enrollee who is a duly enrolled member of the Native Village of Port Graham and who is twenty-one (21) years of age or older and who has resided in the Village for at least one (1) year immediately preceding the election for which he or she declares candidacy, shall be eligible to run for any position on the Council except for the position of Chief. A candidate for the position of Chief must be thirty (30) years of age or older, must have served on the Council for the four (4) years immediately preceding his or her candidacy for the position of Chief, and must meet the other qualifications of this Section. All previous experience of Port Graham Traditional Council members shall coun as qualifying tenure. No person shall be a candidate for more than one (1) position in any election.

Section 3. Regular Elections. The regular election of the Council and other matters requiring a vote of the members shall be held annually during the Annual Membership Meeting in February. (Ref. Article XII, Section 8).

Section 4. Election Ordinance. An election ordinance, consistent with this Constitution, shall be adopted by the Council. The election ordinance shall set forth the procedures to be followed in conducting each of the various types of elections called for in this Constitution. The ordinance shall include provisions for conducting all elections by secret ballot, nomination of candidates, maintenance of a current list of eligible voters, and settling of election disputes.

Section 5. Election Board. There shall be an Election Board appointed by the Council whose duties shall be to supervise, administer, and conduct all Village elections. The Election Board shall certify the election of Council members and the matters requiring voter approval, immediately after the election. No member of the Election Board will at the same time be a member of the Council or a candidate for a position on the Council.

ARTICLE VI - REMOVAL, RECALL AND FORFEITURE

Section 1. Removal. Any Council member or other official found guilty by the Council of behavior involving gross misconduct in office or neglect of duty shall be removed from office if at least three (3) members of the Council vote in favor of such removal, and voting must be by secret ballot. The Council member accused shall have no right to cast a ballot. Before any vote for removal is taken, the Council member subject to removal shall be given a written statement of the charges against him/her at least ten (10) days before the meeting of the Council at which he/she is to appear and he/she shall be given an opportunity to answer any and all charges at the designated Council meeting. If the person subject to removal fails to appear before the Council, the Council shall proceed with the vote as scheduled. The decision of the Council shall be final. No member of the Council shall preside over the meeting at which his/her removal is being considered.

Section 2. Recall. Village tribal members shall have the power to recall any member of the Council. The recall process shall be initiated by filing with the Council a petition asking for such recall, signed by at least thirty percent (30%) of the eligible voters, and setting forth the reasons for the petition. Within thirty (30) days after receipt of a valid recall petition, the Council shall call a special membership meeting to consider the petition and decide whether the official named in the petition is to be recalled. The election shall be conducted pursuant to the election ordinance. Once an individual has been subjected to recall proceedings, he/she shall not again be subject to such action during the balance of his/her term of office for the same reasons specified in the original recall petition.

Section 3. Forfeiture. If any member of the Council is found guilty of a felony in any Federal or State court, resigns, or is absent from three (3) successive meetings without being excused by the Council, he/she shall automatically forfeit his/her office.

ARTICLE VII - VACANCIES

Section 1. Vacancies. Vacant Council seats, whether vacated by removal, death, resignation, recall, or forfeiture, shall be filled by appointment by the remaining member(s) of the Council at its next meeting. Such replacement(s) shall serve for the remainder of the predecessor's term.

ARTICLE VIII - POWERS

Section 1. Powers. The Council shall the have powers and responsibilities hereinafter provided, subject to any limitations imposed upon such powers by statutes and laws of the United States:

(a) To consult, negotiate, contract, or conclude agreements with Federal, State, and local governments, and private agencies and persons, on matters which may affect the Native Village of Port Graham;

(b) To employ legal counsel, the choice of counsel and fixing of fees subject to the approval of the Secretary of the Interior or his authorized representative so long as such approval is required by Federal law;

(c) To receive advice from, and make recommendations to the Secretary of the Interior with regard to all appropriation estimates for all projects which are for the benefit of members of the Native Village of Port Graham prior to the submission of such estimates to the Office of Management and Budget and Congress;

(d) To acquire property and to accept gifts;

(e) To join and or charter Village enterprises, corporations, and associations;

(f) To prescribe rules and regulations governing Village membership, loss of membership, and the enrollment of members, not inconsistent with this Constitution;

(g) To administer Village assets and manage all economic affairs and enterprises of the Village, including the lease of Village lands; provided that the sale or other permanent disposition of Village lands shall require approval by the membership in a referendum conducted pursuant to Article IX, Section 2 of this Constitution.

(h) To do all things to promote the peace, safety, health, and general welfare of the members of the Village;

(i) To enact ordinances and regulations consistent with this Constitution for the conduct and administration of elections;

(j) To levy and collect taxes, fees, and assessments for Village purposes, and to provide for effective land and resource use through the promulgation of land use plans and the adoption of zoning and other ordinances;

(k) To encourage and foster the arts, crafts, traditions, language, and culture of the Village; and

(l) To promulgate and enforce ordinances governing the conduct of all persons within the jurisdiction of the Native Village of Port Graham, and to provide for the administration of justice as provided for in this Constitution.

Section 2. Inherent Powers. Any rights and powers inherent in the Native Village of Port Graham but not expressly referred to in this Constitution shall not be lost by the reason of their omission.

ARTICLE IX - POPULAR PARTICIPATION IN GOVERNMENT

Section 1. Initiative. The eligible voters of the Village shall have the right to propose legislation and to rescind ordinances and resolutions promulgated by the Council. Upon receipt of a petition signed by at least thirty percent (30%) of the eligible voters, the Council shall call an election to be conducted by the Election Board no later than thirty (30) days after the receipt of the petition. Voting shall be by secret ballot. An affirmative vote by a majority of the votes cast at such election shall determine the matter(s) in question.

Section 2. Referendum. The Council, by an affirmative vote of at least three (3) of its members, shall refer to the membership any matters about which it wishes to or is required to determine the will of the membership. A referendum election shall be conducted by the election board within thirty (30) days of a Council decision to call for a referendum vote. Voting shall be by secret ballot. An affirmative vote by a majority of the eligible voters shall be required to determine the matter(s) in question.

Section 3. Decision of Members. The decision of the voters in any duly conducted election shall be binding on the Council and the Village, and shall remain in full force until amended or rescinded by subsequent action of the voters, or expire by its own terms.

ARTICLE X - RIGHTS OF MEMBERS

Section 1. Rights. All members of the Village shall enjoy without hindrance, equal rights of life, liberty, and the pursuit of happiness..

Section 2. Rights and Privileges. This Constitution shall not in any way alter, abridge, or otherwise jeopardize the rights and privileges of the members of the Village as citizens of the State of Alaska or the United States.

Section 3. Property Rights. The individual property rights of any member of the Native Village of Port Graham shall not be altered, abridged, or otherwise affected by the provisions of this Constitution.

Section 4. Record Review. Village members shall have the right to review all Council records including financial records at any reasonable time in accordance with procedures established by the Council.

Section 5. Exercising Powers Limited. The Native Village of Port Graham in exercising its powers of self-government shall not:

(a) Make or enforce any law prohibiting the free exercise of religion, or abridging the freedom of speech, or of the press, or the right of the people to peaceably assemble and to petition for a redress of grievances;

(b) Violate the right of the people to be secure in their persons, houses, papers, and effects against unreasonable search and seizure, nor issue warrants, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or thing to be seized;

(c) Subject any person for the same offense to be twice put in jeopardy;

(d) Compel any person in any criminal case to be a witness against himself;

(e) Take any private property for public use without just compensation;

(f) Deny to any person in a criminal proceeding the right to a speedy trial, to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and, at his own expense, to have the assistance of counsel for his defense;

(g) Require excessive bail, impose excessive fines, inflict cruel and unusual punishments, and in no event impose for conviction of any one (1) offense, any penalty or punishment greater than imprisonment for a term of one (1) year or a fine of $5000.00 or both;

(h) Deny to any member within its jurisdiction the equal protection of its laws or deprive any member of liberty or property without due process of law;

(i) Pass any bill of attainder or ex post facto law; and,

(j) Deny to any person accused of an offense punishable by imprisonment the right, upon request, to a trial by jury of not less than six (6) persons.

ARTICLE XI - DUTIES OF OFFICERS

Section 1. Chief. The Chief presides at all meetings of the Village and of the Council and shall execute on behalf of the Village all contracts, leases or other documents approved by the Council. The Chief shall vote on matters before the Council. The Chief shall have the general supervision of all other officers, employees, and committees of the Village and see that their duties are properly performed. When the Council is not in session, the Chief shall be the official representative of the Village.

Section 2. Second Chief. The Second Chief shall assist the Chief when called upon to do so. In the absence of the Chief, the Second Chief shall preside over all Council and general membership meetings and shall have all the rights, privileges, duties and responsibilities of the Chief. In addition, the Second Chief shall fulfill the traditional responsibilities of the office, which include taking the initiative to assist the Chief, and actively learning of the Chief's wisdom and experience, and learning the traditions and history of the Village, and learning the concerns and hopes of the Chief for the future of the Village and its members.

Section 3. Secretary. The Secretary of the Council shall act as a Chairman in the event the Chief and the Second Chief are absent from the Village. The Secretary shall : cord all rules and regulations in appropriate books for the information and guidance of the members. It shall be the Secretary's responsibility to keep minutes of all regular and special meetings. The Secretary shall issue notices of all meetings and elections and conduct all general correspondence as directed by the Council.

Section 4. Treasurer. The Treasurer shall carry out the financial directives of the Council; receive all local monies; and keep an accurate account of the receipts and disbursements. Funds shall be deposited in Native Village of Port Graham accounts in a convenient bank selected by the Council where funds are insured by the Federal Deposit Insurance Corporation. All disbursements shall be made by

check in accordance with resolutions and standard procedures of the Council. The Treasurer shall be bonded with a reputable bonding company, and the Council shall authorize payment of any annual bond premium from Village funds. The Treasurer shall give a financial report to the Council once a month, and all financial reports shall be available for inspection by any member of the Village during business hours. At the expiration of his or her term, the Treasurer shall turn over all records and papers in his or her possession to the Council. The functions of the Treasurer may be delegated to an employee of the Village.

Section 5. Records. All records, correspondence, or any paperwork pertaining to the Native Village of Port Graham, shall be turned over to the newly elected Council upon the certification of the election by the Election Board.

ARTICLE XII - MEETINGS

Section 1. Regular Meetings. Regular meetings of the Council shall be held monthly. The time, place, and date of such meetings shall be determined by the Council. Regular monthly meeting notices shall be posted fifteen (15) days in advance. Special meetings of the Council may be called by the Chief and shall be called upon receipt of a petition signed by at least three (3) members of the Council and when so called, the Council shall have power to transact business as in regular meetings, provided that a quorum is present.

Section 2. Quorum. The quorum of the Council shall consist of three (3) members of the Council. No business shall be transacted unless a quorum is present.

Section 3. Meetings Public. All meetings of the Council shall be open to the general membership of the Native Village of Port Graham provided, however, that the Council may recess at its discretion to discuss any matter in a closed or executive session, if the general subject matter to be discussed is expressed in the motion calling for such session and no final or official action is taken thereon in the closed or executive session.

Section 4. Conflict of Interest Prohibited. No Council members shall vote on any matter before the Council in which they have a personal interest or which will benefit directly any member of their immediate family, including but not limited to employment contracts, project funding, and appointments to committees. Immediate family is defined as father, mother, brother, sister, wife, husband, son, or daughter.

Section 5. Ordinances. All final decisions of the Council on matters of general interest or permanent interest to members of the Village shall be embodied in ordinances. The ordinances shall be collected and made available to members and other affected persons upon reasonable request.

Section 6. Resolutions. All final decisions of the Council on matters of temporary interest shall be embodied in resolutions. Resolutions shall be collected and made available to members and other affected persons upon request.

Section 7. Parliamentary Procedures. All meetings shall be conducted in accordance with rules adopted by the Council.

Section 8. Regular Annual Membership Meetings. Regular meetings of the membership of the Native Village of Port Graham shall be held annually in February. The date, time, and place of such meetings shall be determined by the Council. Special meetings of the general membership may be called by the Chief and shall be called upon receipt of a petition signed by at least thirty percent (30%) of the eligible voting members of the Native Village of Port Graham.

Section 9. Quorum of Membership. A quorum of the membership at an annual meeting shall consist of thirty percent (30%) of the eligible voters of the Native Village of Port Graham. No business shall be conducted at an annual meeting unless a quorum is present.

ARTICLE XIII - VILLAGE JUDICIAL SYSTEM

Section 1. Independent Judiciary. The judicial authority of the Native Village of Port Graham shall be vested in an independent Tribal Court. The first judges of such Court shall be elected by the Village members at the same election in which the first Tribal Council is elected, as set forth at Article IV, Section 3.

Section 2. Number of Judges and Terms of Office. There shall be three judges elected. Their positions shall be referred to as Seat A, Seat B, and Seat C. To provide for staggered terms, at the first election Seat A shall be a two-year term, Seat B shall be a three-year term, and Seat C shall be a four-year term. At subsequent elections, each seat shall be a four-year term.

Section 3. Qualifications of Judges. Candidates for judicial office shall be thirty-five (35) years of age or older, and shall be duly enrolled members of the Native Village of Port Graham, and shall have resided in the Village for no less than five years immediately preceding the election. Qualifications for Seat C also include the ability to speak, read, and write the English language. No person shall be eligible for candidacy who has ever been convicted of a serious crime under Federal or State law, except that any conviction for fish and game violations shall not be considered "criminal" under this Section. No person shall be eligible for candidacy who has a history of alcohol or drug abuse, except that recovered alcoholics and addicts may be eligible if they have been free from the effects of alcoholism or addiction for the five years immediately preceding the election.

Section 4. Jurisdiction. The Tribal Court shall have the following jurisdiction, as vested in it by tribal ordinance and which is not contrary to applicable Federal law:

(a) Subject Matter Jurisdiction. The Tribal Court of the Native Village of Port Graham shall have original jurisdiction over all causes of action brought by the Village for violations of Village regulations and/or ordinances, for actions brought against a member pursuant to the Indian Child Welfare Act, for actions brought against the Village pursuant to the Indian Civil Rights Act and this Constitution, and over such other causes of action as the Federal Government may vest in the Courts of Native American tribes in the United States. The Tribal Court shall have jurisdiction concurrent with the State of Alaska over all other causes of action, so long as such shared jurisdiction is required by Federal law ("Public Law 280");

(b) Personal Jurisdiction. The Tribal Court of the Native Village of Port Graham shall have jurisdiction over persons, including corporations and unincorporated entities, who are properly accused of violations, the situs or effects of which cause injury within the territory of the Village, such territory being defined at Article II of this Constitution.

Section 5. Powers. The Tribal Court can exercise such powers as listed below, as vested in it by tribal ordinance and are not contrary to applicable Federal law, and may enter orders, upon proper findings, which:

(a) in civil actions:
1. require restitution to a party; or
2. require community work; or
3. levy a fine not to exceed $5,000 (five thousand); or
4. decide custody, divorce, adoption, support, and other domestic relations matters; and

(b) in criminal actions brought under Tribal Ordinance::
1. require incarceration not to exceed one (1) year; or
2. revoke a tribal license; or
3. banish a convicted person from the geographical territory of the Native Village of Port Graham and prohibit re-entry for a period not to exceed one (1) year.

Section 6. Court Procedures. Internal Court procedures shall be adopted by the Judges within two (2) months after the election of the first panel of Judges.

Section 7. Other Matters. Other matters concerning the operation and functioning of the Tribal Court, such as compensation, vacancies, recall, administrative support staff, etc., shall be decided by Ordinance, promulgated by the Council, within six (6) months of the effective date of this Constitution.

ARTICLE XIV - INDIAN CHILD WELFARE ACT

The Native Village of Port Graham shall exercise all powers pursuant to the Indian Child Welfare Act of 1978, Public Law 95-608 (92 Stat. 3069, 25 U.S.C. 1901, et. seq.), as amended.

ARTICLE XV - AMENDMENTS

This Constitution may be amended by a majority vote of the qualified voters of the Native Village of Port Graham voting in an election called for that purpose by the Secretary of the United States Department of the Interior or his authorized representative, provided that at least thirty percent (30%) of those entitled to vote shall vote in such election. No amendment shall become effective until approved by the Secretary of the Interior or his authorized representative.

ARTICLE XVI - SAVINGS CLAUSE

If any provision of this Constitution shall be declared invalid by a court of competent jurisdiction, the invalid provision shall be severed and the remaining provisions shall continue in full force and effect. All ordinances and resolutions in effect at the time of the Secretarial approval of this Constitution which are not inconsistent with this Constitution, shall remain in force.

ARTICLE XVIII - ADOPTION

This Constitution, when adopted by a majority of the qualified voters of the Native Village of Port Graham voting at an election called for that purpose by the Secretary of the of the United States Department of the Interior or his authorized representative, in which at least thirty percent (30%) of those entitled to vote shall vote, shall be effective upon the date of the Secretary's approval.